

**REVISED PROPOSED REGULATION OF
THE COMMISSIONER OF MORTGAGE LENDING**

LCB File No. R143-08

December 2, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-5, 7-45 and 49, NRS 645A.050; §§6 and 46-48, NRS 645A.050 and 645A.070.

A REGULATION relating to escrow; establishing requirements for education of applicants and licensees and for approval of providers and courses of education; revising provisions relating to the maintenance of surety bonds; authorizing an escrow agency to retain certain records in electronic format under certain circumstances; requiring an escrow agency to notify the Commissioner of Mortgage Lending upon the occurrence of certain events; setting forth certain requirements for a transfer of funds between escrow accounts; mandating certain disclosures to be made by an escrow agency or agent of certain relationships and affiliations; establishing a rating scale for reporting by an examiner after an examination of an escrow agency; establishing procedures for disciplinary action against escrow agents and escrow agencies; revising provisions relating to money held in trust and preparation of records; revising provisions relating to the format of an annual financial statement; revising provisions relating to standards of practice for an escrow agent or agency; and providing other matters properly relating thereto.

Section 1. Chapter 645A of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 45, inclusive, of this regulation.

Sec. 2. 1. *“Approved course” means a course of education that has been:*

(a) Certified by an organization set forth in NAC 645B.360, except as otherwise provided in subsections 2 and 3; and

(b) Approved by the Commissioner as a course for initial licensure or continuing education.

2. The Commissioner will consider for approval alternative sources of programs offered by providers that are not certified by an organization set forth in NAC 645B.360 if the Commissioner determines that a course covers a specialized area of practice.

3. Courses offered by the Division do not need the certification of an organization set forth in NAC 645B.360.

Sec. 3. *“Hour of instruction” means 50 minutes of instruction or more.*

Sec. 4. *Unless a surety bond is cancelled in accordance with the provisions of NRS 645A.043, or the surety bond or substitute form of security is otherwise extinguished by an action at law, an escrow agency shall ensure that the surety bond or substitute form of security held while the escrow agency or escrow agent was licensed contains provisions for a discovery period of 3 years after cancellation of the bond or substitute form of security and expiration of the license of the escrow agency or escrow agent to cover activities conducted before such cancellation and expiration. The 3-year period is not cumulative and the amount of coverage must be equal to the amount of the bond held by the escrow agency while the escrow agency was licensed.*

Sec. 5. *A surety bond required by NRS 645A.041 may contain a deductible if the escrow agency deposits with the Commissioner a surety bond or substitute form of security satisfactory to the Commissioner in the amount of the deductible.*

Sec. 6. *The records required by NAC 645A.030 may be maintained by an escrow agency pursuant to NAC 645A.030 and provided to the Commissioner or an authorized representative of the Commissioner in an electronic format if:*

1. The records are maintained and provided in a software format acceptable to the Commissioner that allows the Commissioner or an authorized representative complete access to all records;

2. The escrow agency ensures that the Commissioner or an authorized representative has the ability to download and print any or all of the records maintained in an electronic format;

3. The escrow agency provides in printed form any or all of the records maintained in an electronic format:

(a) If the electronic records are not maintained in a format that enables the Commissioner or an authorized representative to determine if the escrow agency is complying with the provisions of chapter 645A of NRS or the regulations adopted pursuant thereto; or

(b) Upon the request of the Commissioner or an authorized representative; and

4. The records are maintained on a media that:

(a) Is not erasable;

(b) Does not allow changes to a document stored on the media;

(c) Is consistent with the minimum standards of quality approved by the National Institute of Standards and Technology or the Association for Information and Image Management; and

(d) Contains written authentication identifying the electronic record as an exact, unaltered copy of the document which the record purports to be.

Sec. 7. *An escrow agency shall notify the Commissioner in writing immediately after:*

1. The filing of a claim upon the surety bond required by NRS 645A.041.

2. The entry of a money judgment in a civil action against the escrow agency or any of its escrow agents.

3. *The filing of a criminal complaint against the escrow agency, an escrow agent, or any officer, director or employee of the escrow agency.*

4. *The entry of a judgment in a criminal action against the escrow agency, an escrow agent, or any officer, director or employee of the escrow agency.*

Sec. 8. 1. *A transfer of funds between escrow accounts may not be accomplished by the making of book entries alone but must be accomplished by:*

(a) *The wire transfer or writing of a check from one escrow account to the other; and*

(b) *The deposit of a check or wire transfer or other form of authorized transfer that is acceptable to the depository institution for the account of, and the writing or electronic generation of a receipt for, the escrow account to which the funds are being transferred.*

2. *A transfer between escrow accounts must be properly supported and documented in the escrow records including, without limitation, the reasons for and the appropriate approval of the transfer.*

Sec. 9. 1. *If an escrow agency, escrow agent, relative of an escrow agent or a company related to or affiliated with the escrow agency or the escrow agent is a principal to an escrow transaction or is acting or has acted as a contractor, mortgage broker, mortgage agent, loan modification and foreclosure consultant, real estate broker or real estate salesperson in relation to an escrow transaction, the escrow agency or escrow agent must, before being employed as the escrow agency or escrow agent in connection with the transaction, disclose in writing to all parties to the escrow transaction that relationship or affiliation. The disclosure must be printed in at least 12-point bold type on a form prescribed by the Division.*

2. *For purposes of this section, “relative” means a spouse or any other person who is related by blood, adoption or marriage, within the second degree of consanguinity or affinity.*

Sec. 10. *Upon completion of an examination of an escrow agency pursuant to paragraph (b) of subsection 2 of NRS 645A.050, the examiner shall, in a report of findings, rate the escrow agency on a scale of “1” to “5,” as follows:*

1. A rating of “1” indicates that the escrow agency and the management of the escrow agency have demonstrated a high degree of compliance with applicable laws and regulations. A rating of “1” may be given if there is a minor violation or deficiency but only if:

(a) The escrow agency acted to correct the violation or deficiency immediately; and
(b) The remedial action taken by the escrow agency is likely to prevent future violations or deficiencies.

2. A rating of “2” indicates that the escrow agency and the management of the escrow agency have demonstrated substantial compliance with applicable laws and regulations and that the escrow agency can correct any violations or deficiencies noted in the report made by the examiner with a minimum of regulatory supervision. A rating of “2” may be given if there is more than one minor violation or deficiency but only if:

(a) The escrow agency acted to correct the violations or deficiencies immediately; and
(b) The remedial action taken by the escrow agency is likely to prevent future violations or deficiencies.

3. A rating of “3” indicates that the escrow agency and the management of the escrow agency have demonstrated less than satisfactory compliance with applicable laws and regulations. A rating of “3” may result in regulatory supervision for the correction of the violations and deficiencies noted in the report made by the examiner. A rating of “3” may be given if there were minor violations or deficiencies from a previous examination that were not corrected.

4. A rating of “4” indicates that the escrow agency and the management of the escrow agency have demonstrated a substantial lack of compliance with applicable laws and regulations and that immediate remedial action is required for the correction of the violations and deficiencies noted in the report made by the examiner. A rating of “4” may result in the escrow agency being subject to close regulatory supervision. Disciplinary action may be warranted to cause remedial action pursuant to NRS 645A.090.

5. A rating of “5” indicates that the escrow agency and the management of the escrow agency have demonstrated a serious and material lack of compliance with applicable laws and regulations. A rating of “5” may result in immediate remedial action for the correction of the violations and deficiencies noted in the report made by the examiner. Remedies may include, without limitation:

(a) Action by the Commissioner to take possession of the property, business and assets of the escrow agency pursuant to NRS 645A.140; and

(b) Disciplinary action pursuant to NRS 645A.090.

Sec. 11. *The following subjects are approved as course material for initial licensure and continuing education:*

1. Federal laws and regulations relating to escrow activities, including, without limitation:

(a) The Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 et seq.;

(b) The Privacy Act of 1974, 5 U.S.C. § 552a;

(c) The USA PATRIOT Act, Public Law 107-56;

(d) The Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601 et seq., and Regulation X, 24 C.F.R. Part 3500; and

(e) The Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., including, without limitation:

(1) The Home Ownership and Equity Protection Act of 1994, 15 U.S.C. § 1639; and

(2) Regulation Z, 12 C.F.R. Part 226.

2. The provisions of Nevada state laws and regulations relating to mortgage lending or the activities of covered service providers, foreclosure consultants and loan modification consultants.

3. The provisions of Nevada state laws and regulations relating to escrow activities, including, without limitation:

(a) This chapter or chapter 645A of NRS governing escrow agencies and escrow agents;

(b) Chapter 598D of NRS governing unfair lending practices;

(c) Chapter 692A of NRS governing title insurance;

(d) Chapter 106 of NRS governing real mortgages;

(e) Chapter 107 of NRS governing deeds of trust; and

(f) Chapters 111, 112 and 113 of NRS and any other applicable laws governing contracts or agency.

4. Practicable application, practices and information relating to the escrow or title industries.

5. Ethics and deceptive trade practices.

6. Any other subject approved by the Division.

Sec. 12. *1. A natural person who is an applicant for an initial license as an escrow agent must complete at least 15 hours of instruction in the areas of instruction set forth in subsection 2. Ten of the required hours of instruction must be through live instruction in a*

classroom. The remaining 5 hours of instruction may be completed through live instruction in a classroom or through distance education.

2. The 15 hours of instruction required by subsection 1 must include:

(a) Three hours of professional ethics, which must include instruction on fraud and consumer protection;

(b) Three hours of federal law and regulations as described in subsection 1 of section 11 of this regulation;

(c) Four hours of Nevada law and regulations relating to escrow agencies or escrow agents, at least 2 hours of which must be related to this chapter and chapter 645A of NRS;

(d) Three hours of instruction relating to the practical application of escrow processes or a specialized area of practice; and

(e) Two hours of electives.

3. An applicant for an initial license as an escrow agent must provide to the Commissioner one or more certificates of completion, in a form satisfactory to the Commissioner, indicating that the applicant has successfully completed the 15 hours of instruction required by this section. Certificates issued for all such courses must bear the name of the certifying organization.

4. An applicant who lives in a rural area may, with the prior written approval of the Commissioner, take any course required by this section as an interactive, correspondence, distance or televideo course that involves interaction with the instructor and other students.

5. As used in this section, “rural area” means a city or town:

(a) Whose population is less than 60,000; and

(b) That is located more than 60 miles from a city or town whose population is 60,000 or more.

Sec. 13. *1. A person licensed as an escrow agent shall complete, during the 12 months immediately preceding the date on which the license expires, at least 10 hours of instruction in approved courses of continuing education.*

2. An approved course of continuing education must focus on the practical application of an escrow transaction.

3. The Commissioner will consider the appropriateness of alternative subject material for specialized areas of practice.

4. Of the hours of instruction required by subsection 1, a person licensed as an escrow agent must complete:

(a) Two hours of professional ethics, which must include instruction on fraud and consumer protection;

(b) Two hours of federal law and regulations as described in subsection 1 of section 11 of this regulation;

(c) Two hours of Nevada law and regulations relating to this chapter and chapter 645A of NRS or other Nevada laws and regulations relating to mortgages; and

(d) Four hours of electives, which may include instruction appropriate to a specialized area of practice.

Sec. 14. *1. A provider that wishes to offer approved courses to meet the educational requirements for licensure or continuing education under this chapter and chapter 645A of NRS must apply to the Commissioner before offering any approved courses and annually*

thereafter on or before December 31 for approval on a form prescribed by the Commissioner.

The application must include, without limitation:

- (a) The name and address of the provider;*
- (b) The type of provider and a description of its facilities;*
- (c) Any information requested by the Commissioner concerning the ownership of the provider, including the business organization and the names and addresses of all directors, principals, officers and others having interests as owners;*
- (d) A list of the instructors;*
- (e) A list of the courses to be offered and a hard copy of course materials for each course;*
- (f) The allotment of time for each subject;*
- (g) A tentative schedule of courses;*
- (h) The titles, authors and publishers of all required textbooks;*
- (i) A copy of each examination to be used and the correct answer for each question;*
- (j) A statement of:*
 - (1) The purpose of the provider;*
 - (2) The fees to be charged;*
 - (3) The days, times and locations of classes;*
 - (4) The number of quizzes and examinations for each course;*
 - (5) The grading systems, including the methods of testing and standards of grading for each course;*
 - (6) The requirements for attendance; and*
 - (7) The location of the students' records;*

(k) A statement as to whether the provider or any instructor employed by the provider has been disciplined by any governmental agency in this State or any other state; and

(l) A statement that educational courses will not be provided free of charge as an inducement for students or their employers to use the services of the provider for any activities related to escrow agencies.

2. The Commissioner may waive the requirements of this section for courses offered by or through a federal or state governmental agency.

3. If the application of the provider is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider by filing an appeal with the Commissioner not later than 20 days after the date on which the denial or withdrawal of the approval of the provider becomes effective, and the provider will have a right to a hearing.

4. The Commissioner may recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a provider.

Sec. 15. *1. A provider must submit an application for the approval of each course the provider intends to offer on a form provided by the Commissioner and include with the submission all applicable information prescribed by section 14 of this regulation.*

2. The Commissioner will not grant retroactive approval of a course.

3. If a course offered by a provider that is a professional organization has been approved for continuing education, the provider shall not restrict attendance at the course to only members of that organization.

4. Any advertising, promotional brochure or form for registration for an approved course must contain, in writing, the policy of the provider concerning cancellations and refunds.

5. If the application of the provider for a course is denied, the provider may appeal the decision of the Commissioner to deny approval of the provider's course by filing an appeal with the Commissioner not later than 20 days after the date on which the denial of the approval of the provider's course becomes effective, and the provider will have a right to a hearing.

6. The Commissioner has the right to be awarded and recover costs and attorney's fees from the provider related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of a course.

Sec. 16. *1. A provider approved by the Commissioner to offer courses to meet the requirements for licensure or continuing education under this chapter or chapter 645A of NRS shall:*

(a) Maintain a record of each student's attendance and certification in any of those courses for 4 years after the student's enrollment and shall have such records open to inspection by the Commissioner, upon request, during the provider's business hours.

(b) At least quarterly, provide to the Commissioner a tentative schedule of the courses to be offered by the provider.

2. A provider that is licensed to operate by the Commission on Postsecondary Education shall provide evidence of such licensure to the Commissioner.

Sec. 17. *1. Within 15 days after the occurrence of any material change in the information provided by a provider in its application pursuant to section 14 of this regulation which would affect its approval by the Commissioner, the provider shall give the Commissioner written notice of that change.*

2. To qualify for annual renewal of approval by the Commissioner, a provider must

submit to the Commissioner on or before December 31 of each year:

(a) A written certification, in a form prescribed by the Commissioner, declaring that the provider has met all applicable requirements of this chapter and chapter 645A of NRS; and

(b) A sworn statement, in a form prescribed by the Commissioner, declaring that the information contained in the original application is current or, if it is not current, a list of all material changes.

3. The Commissioner may deny renewal of approval to any provider that does not meet the standards required by this chapter or chapter 645A of NRS.

4. Within 60 days after a decision is made to deny the renewal of approval of a provider, the Commissioner will give written notice of the decision and the basis for that decision by certified mail to the last known address of the provider.

Sec. 18. A provider approved by the Commissioner shall not make any misrepresentation in its advertising about any approved course which it offers to fulfill requirements for licensing or continuing education under this chapter or chapter 645A of NRS.

Sec. 19. A provider that conducts approved courses:

1. May employ as instructors of the approved courses only persons who meet the qualifications set forth in section 20 of this regulation.

2. Shall limit guest lecturers who are experts in related fields, excluding Division personnel, to 25 percent of the total hours of instruction per approved course.

3. Shall include a statement that the provider is approved by the Commissioner on all advertisements of the provider.

4. Shall require each student to attend the entire approved course as a condition of receiving certification for the approved course.

5. Shall certify the completion of only the number of hours for which the approved course has been approved by the Commissioner. Except as otherwise provided in subsection 2 of section 29 of this regulation, completion of a portion of an approved course does not satisfy the requirements for certification.

6. Shall update its course materials at least annually to reflect changes in the law and the marketplace.

7. Shall not allow a student to pass an approved course by taking an examination without having the required attendance. In addition, an owner, instructor, affiliate or other person associated with the provider may not take an examination administered by the provider to meet the requirements for initial licensure or continuing education under this chapter and chapter 645A of NRS.

8. Shall admit the Commissioner to audit and evaluate the presentation of the approved course without prior notice by the Commissioner or cost to the Commissioner.

9. Shall not present an approved course for the main purpose of selling products or services and shall limit the announcement of products or services during the approved course to not more than 1 minute for each credit hour.

10. Shall not provide, distribute, disseminate or otherwise make available to students the answers to examination questions.

Sec. 20. *1. An instructor must have written approval from the Commissioner before teaching an approved course. No retroactive approval for instructors will be granted.*

2. An applicant for approval as an instructor must apply on a form prescribed by the Commissioner.

3. The Commissioner will not approve a person as an instructor if the person:

(a) Has been disciplined by the Commissioner:

(1) Within the immediately preceding 5 years; or

(2) More than one time; or

(b) Has been determined in an administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending or real estate or the practice of covered service providers, foreclosure consultants, loan modification consultants or escrow agents in this State or any other state.

4. A person may be approved as an instructor to teach an approved course relating to his or her principal occupation if the person:

(a) Has:

(1) A bachelor's degree or a more advanced degree, plus at least 2 years of full-time experience in the field in which the person will be providing instruction;

(2) Teaching experience of at least 75 hours in the field in which the person will be providing instruction within the 3 years immediately preceding the date of the application for approval plus at least 3 years of full-time experience in that field;

(3) At least 6 years of full-time experience in the field, or a closely related field, in which the person will be providing instruction; or

(4) Any combination of at least 6 years of college-level course work and full-time experience in the field in which the person will be providing instruction;

(b) Has a good reputation for honesty, integrity and trustworthiness; and

(c) Submits to the Commissioner satisfactory documentation of the person's qualifications and a resume outlining the person's experience, education and teaching experience in the field in which the person will be providing instruction.

5. The Commissioner will periodically review and evaluate each approved instructor.

6. An approved instructor who is also licensed as an escrow agent may receive credit for the instructor's own annual continuing education requirement at the rate of 2 hours of credit for every 1 hour taught.

Sec. 21. 1. *The Commissioner may deny or withdraw the approval of an instructor who:*

(a) Does not meet the standards prescribed in section 20 of this regulation;

(b) Does an inadequate job of teaching the subject matter of an approved course, as evidenced by student evaluations or an audit conducted by the Commissioner;

(c) Has been determined in any administrative or judicial proceeding to have violated any statute, rule, regulation or order pertaining to mortgage lending or real estate or the practice of covered service providers, foreclosure consultants, loan modification consultants or escrow agents;

(d) Has been convicted of, or entered a plea of guilty or nolo contendere to, any crime involving fraud, deceit, misrepresentation or moral turpitude; or

(e) Engages in inappropriate behavior in the classroom as evidenced by an audit conducted by the Commissioner.

2. Before denying or withdrawing the approval of the instructor of an approved course, the Commissioner will notify the provider of the approved course of the Commissioner's intent to deny or withdraw approval of the instructor. The notice must include the specific reasons upon which the Commissioner is basing the decision to deny or withdraw the approval of the instructor. Not later than 20 days after the date on which the provider receives the notice, the provider may provide a written response to the Commissioner that clearly sets forth the reasons why the approval of the instructor should not be denied or withdrawn and outlining

any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Commissioner will review the notice and any response submitted by the provider and will:

- (a) Deny or withdraw the approval of the instructor;*
- (b) Approve the instructor or allow the instructor to remain approved if certain specific enumerated conditions are met; or*
- (c) Allow the continued approval of the instructor.*

↪ If the Commissioner decides to deny or withdraw the approval of the instructor, the denial or withdrawal of approval of the instructor becomes effective upon the mailing of the Commissioner's decision to the provider of the approved course taught or proposed to be taught by the instructor by certified mail, return receipt requested, to the provider's last known business address.

3. If the Commissioner withdraws the approval of an instructor, the Commissioner will give credit to a student for completing the approved course if the student began the approved course before the provider received written notice of the withdrawal of approval of the instructor.

4. The instructor may appeal the decision of the Commissioner to deny or withdraw the approval of the instructor by filing an appeal with the Commissioner not later than 20 days after the date on which the denial or withdrawal of the approval of the instructor becomes effective, and the instructor will have the right to a hearing.

5. The Commissioner has the right to be awarded and recover costs and attorney's fees from the instructor related to a hearing in which the hearing officer affirms the denial or withdrawal of approval of an instructor.

Sec. 22. 1. An instructor of an approved course shall ensure that:

(a) Class sessions are commenced in a timely manner and are conducted for the full amount of time that is approved; and

(b) Each approved course is taught according to the course plan and any instructor guide that was approved by the Commissioner, including the furnishing to students of appropriate student materials.

2. An instructor shall conduct himself or herself in a professional and courteous manner when performing instructional duties and shall conduct classes in a manner that demonstrates the following basic teaching skills:

(a) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to use illustrative examples as appropriate and to respond appropriately to questions from students;

(b) The ability to effectively use varied instructional techniques in addition to lectures, including, without limitation, class discussion, role-playing and other techniques;

(c) The ability to use varied instructional aids effectively to enhance learning;

(d) The ability to maintain an appropriate learning environment and effective control of a class; and

(e) The ability to interact with adult students in a positive manner that:

(1) Encourages students to learn;

(2) Demonstrates an understanding of varied student backgrounds;

(3) Avoids offending the sensibilities of students; and

(4) Avoids personal criticism of any other person, agency or organization.

Sec. 23. 1. A course must:

(a) Be approved annually by the Commissioner; and

(b) Relate to the subject matters prescribed by section 11 of this regulation.

2. None of the following kinds of courses or activities will be accepted from a student as fulfillment of the education required for initial licensure or continuing education:

(a) Courses designed to develop or improve clerical, office or business skills that are not related to the subject matters listed in section 11 of this regulation, including, without limitation, typing, shorthand, operation of business machines, the use of computers or computer software, improvement of memory, or writing of letters and reports;

(b) Business courses in advertising or psychology;

(c) Courses designed to motivate a person or to develop the self-image of a person;

(d) A course for the development of instructors; or

(e) A meeting for the promotion of sales, a program of office training or other activity which is held as part of the general business of an escrow agency.

3. The Commissioner will not approve credit for more than 7 hours of instruction per day.

Sec. 24. *A provider seeking approval of a computer-based distance education course must submit a complete copy of the course to the Commissioner in the medium to be used and, if requested, must make available, at a date and time satisfactory to the Commissioner and at the provider's expense, all equipment and software necessary to enable the Commissioner to review the course. In the case of an Internet-based course, the provider shall provide the Commissioner access to the course via the Internet at no charge at a date and time satisfactory to the Commissioner.*

Sec. 25. *1. To receive a certificate of completion for an approved course, a student must:*

(a) Direct his or her attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction;

(b) Refrain from engaging in activities which are distracting to other students or the instructor, or which otherwise disrupt the orderly conduct of a class, including, without limitation, the use of text messages, voice pagers, beepers, smartphones and cellular phones; and

(c) Not be absent from the classroom for more than 18 minutes per every 3 hours of instruction, not including break periods.

2. If an instructor denies the award of a certificate of completion to a student who fails to satisfy the conditions set forth in subsection 1, the student may, within 30 days after that denial, file a written request with the Commissioner to review the matter. If the written request contains allegations which, if true, would qualify the student to receive a certificate of completion, the Commissioner will set the matter for an informal hearing to be conducted as soon as practicable.

Sec. 26. *1. Each approved course and each instructor of an approved course must be evaluated by students on a form prescribed by the Commissioner and provided by the provider during every course offering.*

2. The instructor shall provide to each student who successfully completes an approved course a certificate of completion, in a form satisfactory to the Commissioner, indicating that the student has successfully completed the applicable number of hours of instruction which may be used to satisfy the requirements of section 12 or 13 of this regulation.

Sec. 27. *1. A provider must apply annually for the renewal of approval of a course on a form prescribed by the Commissioner. An application for renewal must be submitted to the*

Commissioner at least 5 weeks before the previous approval expires. If the provider does not timely submit the application for renewal, the provider must apply for an original approval as provided in section 14 of this regulation.

2. Each approved course and instructor is subject to review and audit by the Commissioner. If the Commissioner conducts such a review or audit, the provider shall make available to the Commissioner all records and materials requested which are necessary to the review.

Sec. 28. *1. If the Commissioner determines, through an audit or otherwise, that an approved course does not meet the standards for such a course set forth in this chapter or chapter 645A of NRS, the Commissioner will notify the provider of the approved course of the intent to withdraw approval of the course. The notice must include the specific reasons upon which the Commissioner is basing the decision to withdraw approval of the course. Not later than 20 days after the date on which the provider receives the notice, the provider may provide a written response to the Commissioner that clearly sets forth the reasons why approval of the course should not be withdrawn and outlining any corrective measures that the provider will undertake. After the 20-day period has elapsed, the Commissioner will review the notice and any response submitted by the provider and:*

(a) Withdraw approval of the course;

(b) Allow the course to remain approved if certain specific enumerated conditions are met;

or

(c) Allow the continued approval of the course.

↪ If the Commissioner decides to withdraw approval of the course, the withdrawal of approval of the course becomes effective upon the mailing of the Commissioner's decision to withdraw

approval to the provider by certified mail, return receipt requested, to the provider's last known business address.

2. If the Commissioner withdraws approval of a course, the Commissioner will give credit to a student for completing the course if the student began the course before the provider received written notice of the withdrawal of approval of the course.

3. The provider may appeal the decision of the Commissioner to withdraw approval of a course or an instructor of an approved course by filing an appeal with the Commissioner not later than 20 days after the date on which the withdrawal of the approval of the course becomes effective, and the provider is entitled to a hearing.

Sec. 29. *1. To receive credit for an approved course of continuing education, an escrow agent shall complete the course not more than 12 months immediately preceding the date on which the license of the escrow agent expires.*

2. An escrow agent must complete at least 90 percent of an approved course to receive credit for continuing education for that course.

Sec. 30. *1. If a person engages in an activity in violation of the provisions of this chapter or chapter 645A of NRS or an order of the Commissioner, the Commissioner may issue an order to the person directing the person to cease and desist from engaging in the activity.*

2. The order to cease and desist must be in writing and must state that, in the opinion of the Commissioner, the person has engaged in an activity:

(a) For which the person has not received a license as required by this chapter or chapter 645A of NRS; or

(b) In a manner that violates the provisions of this chapter or chapter 645A of NRS or an order of the Commissioner.

3. A person who receives an order to cease and desist pursuant to this section shall not engage in any activity governed by this chapter or chapter 645A of NRS after receiving the order unless the order is suspended or rescinded.

4. Not later than 20 calendar days after receiving an order pursuant to this section, the person who receives the order may file a verified petition with the Commissioner to request a hearing. Upon receipt of the verified petition, the Commissioner may, for good cause shown, suspend the order pending the hearing. The Commissioner will hold the hearing on a date not later than 30 calendar days after the date the petition is filed unless the Commissioner and the person agree to another date. The order to cease and desist is rescinded if the Commissioner fails to:

(a) Hold a hearing:

(1) Not later than 30 calendar days after the date the petition is filed; or

(2) On a date agreed to by the Commissioner and the person; or

(b) Render a written decision within 45 days after the date the hearing is concluded.

5. The decision of the Commissioner after a hearing is a final decision of the Commissioner for the purposes of judicial review.

Sec. 31. 1. *If an escrow agency or escrow agent violates any provision of NRS 645A.090 and the escrow agency or escrow agent fails, without reasonable cause, to remedy the violation within 20 business days after being ordered by the Commissioner to do so or within such later time as prescribed by the Commissioner, or if the Commissioner orders an escrow agency or escrow agent to provide information, make a report or permit an*

examination of the books or affairs of the escrow agency or escrow agent pursuant to this chapter or chapter 645A of NRS and the escrow agency or escrow agent fails, without reasonable cause, to comply with the order within 20 business days or within such later time as prescribed by the Commissioner, the Commissioner may:

(a) Suspend or revoke the license of the escrow agency or escrow agent; and

(b) Conduct a hearing to determine whether the escrow agency is conducting business in an unsafe and injurious manner that may result in danger to the public and whether it is necessary for the Commissioner to take possession of the property of the escrow agency pursuant to NRS 645A.140.

2. In no case is a licensee entitled to a hearing for the imposition of disciplinary action by the Commissioner, unless, within 20 days after receiving a written notice, the licensee requests a hearing from the Commissioner in the manner set forth in the written notice from the Commissioner.

3. If the licensee fails to timely request a hearing, the Commissioner will enter a final order imposing disciplinary action as set forth in the notice sent to the licensee.

Sec. 32. 1. *The Commissioner may issue the denial of any application for a license.*

2. Upon receipt of a denial of an application, the applicant must request a hearing within 20 days after receipt of the notice, or the Commissioner will issue a final order denying licensure.

3. Upon receipt of a request for a hearing pursuant to subsection 2, the Commissioner may designate a person to serve as a hearing officer and a hearing must be set as promptly as possible.

4. Each party to any hearing held pursuant to this section shall, not later than 10 days before the hearing, provide to the opposing party and to the hearing officer all documents anticipated to be used at the hearing. No other discovery is allowed.

Sec. 33. *1. If the Commissioner enters an order taking any disciplinary action against a person, denying a person's application for a license, denying a provider the right to teach approved courses, denying the approval of a provider's course or denying the right of an instructor of a provider to teach an approved course or approved courses, the Commissioner will cause a written notice of the order to be served personally or sent by certified mail or telegram to the person.*

2. Unless a hearing has already been conducted concerning the matter, the person, upon application, is entitled to a hearing. If the person does not make such an application within 20 days after the date of the initial order, the Commissioner will enter a final order concerning the matter.

3. A person may appeal a final order of the Commissioner taking any disciplinary action against the person in accordance with the provisions of chapter 233B of NRS that apply to a contested case.

Sec. 34. *1. If a hearing has been requested in a timely manner as set forth in this chapter or chapter 645A of NRS, each party shall provide to the opposing party and to the hearing officer, not less than 10 days before a hearing, a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing. Nothing in this subsection prohibits a party from calling a rebuttal witness or offering other rebuttal evidence which has not been disclosed if allowed by the*

hearing officer. The filing of a motion does not toll the time for providing information and documentation to an opposing party.

2. Not less than 10 days before a hearing, each party shall provide to the hearing officer a copy of all papers, records, data or documents expected to be used as exhibits at the hearing and a list of witnesses expected to testify at the hearing.

3. If a party fails to provide any document required to be provided by the provisions of this section, the hearing officer may exclude the document.

4. Neither party may serve interrogatories on the other party or conduct depositions, and neither party may engage in any other discovery unless otherwise required by law and allowed by the hearing officer.

Sec. 35. *1. All motions, unless made to exclude a witness, must be in writing.*

2. A written motion must be served on the opposing party and the hearing officer at least 15 days before the time set for the hearing on the motion unless good cause is shown to the hearing officer.

3. An opposing party may file a written response to a motion at least 7 days before the time set for the hearing on the motion by serving the written response on all parties and the hearing officer.

4. No motion for summary judgment will be allowed.

Sec. 36. *1. The time of a hearing may be continued by the hearing officer upon the written petition of a party only for good cause shown.*

2. The party requesting a continuance shall serve the written petition upon the opposing party at the time that the request is made, and the opposing party may file an objection to the request for a continuance within 3 days after receipt of the written petition.

Sec. 37. 1. *In conducting any hearing, the hearing officer is not bound by the technical rules of evidence, and any informality in any proceeding or in the manner of taking testimony does not invalidate any order or decision of the hearing officer. The rules of evidence of courts of this State will be followed generally but may be relaxed at the discretion of the hearing officer if deviation from the technical rules of evidence will aid in determining the facts.*

2. Any evidence offered at a hearing must be material and relevant to the issues of the hearing.

3. Sworn declarations may be introduced in lieu of testimony if a witness resides outside the State of Nevada.

4. The hearing officer may exclude inadmissible, incompetent, repetitious or irrelevant evidence or order that the presentation of that evidence be discontinued.

5. A party who objects to the introduction of evidence shall briefly state the grounds of the objection at the time the evidence is offered. The party who offers the evidence may present a rebuttal argument to the objection.

Sec. 38. 1. *The hearing officer shall:*

(a) Ascertain whether all persons ordered to appear under subpoena are present and whether all documents, books, records and other evidence under subpoena are present in the hearing room.

(b) Administer the oath to all persons whose testimony will be taken as follows:

Do you and each of you solemnly swear or affirm to tell the truth and nothing but the truth in these proceedings?

(c) Ascertain whether either party desires to have a witness excluded from the hearing room until the witness is called. A witness may be excluded upon the motion of the hearing officer or upon the motion of either party. If a witness is excluded, the witness will be instructed not to discuss the case during the pendency of the proceeding. The respondent will be allowed to remain present at the hearing. The Commissioner may designate a person who is a member of the staff of the Division and who may also be a witness to act as its representative. Such a representative will be allowed to remain present at the hearing.

(d) Ascertain whether a copy of the complaint or decision to deny has been filed and whether an answer has been filed as part of the record in the proceedings.

(e) Hear any preliminary motions, stipulations or orders upon which the parties agree and address any administrative details.

(f) Request the Division to proceed with the presentation of its case.

2. Parties may waive opening and closing statements.

3. The respondent may cross-examine witnesses in the order that the Division presents them.

4. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.

5. Evidence which is to be introduced or which is used by a witness:

(a) Must first be marked for identification; and

(b) May be received by the hearing officer at any point during the proceeding.

6. When the Division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and calling of witnesses on the respondent's behalf.

7. The Division may cross-examine witnesses in the order that the respondent presents them.

8. When the respondent has completed his or her presentation, the Division may call any rebuttal witnesses.

9. When all testimony for the Division and respondent has been given and all evidence has been submitted, the hearing officer may request the Division and the respondent to summarize their presentations.

10. The hearing officer may, in his or her discretion, waive or modify any provision of this section if necessary to expedite or ensure the fairness of the hearing.

Sec. 39. *The Division has the burden of proof in any hearing pursuant to this chapter or chapter 645A of NRS. The standard of proof in such a hearing is substantial evidence.*

Sec. 40. *A respondent may represent himself or herself at the hearing or be represented by an attorney.*

Sec. 41. *The hearing officer shall:*

1. Attempt to coordinate the time and location of the hearing with the parties before setting the matter; and

2. Advise the Commissioner in writing of the time and location of the hearing in such a manner as to allow the Commissioner to comply with the notice requirements of NRS 233B.121.

Sec. 42. *1. The provisions of this chapter or chapter 645A of NRS do not affect or limit the authority of the Commissioner, at any stage of a contested case, to make an informal disposition of the contested case pursuant to subsection 5 of NRS 233B.121 or to enter into a consent or settlement agreement pursuant to NRS 622.330.*

2. Any action taken by the Commissioner pursuant to subsection 1:

(a) Is not subject to approval by the hearing officer; and

(b) May have its terms placed into the record at the discretion of the Commissioner.

Sec. 43. *The hearing officer shall issue and serve upon all parties, personally or by certified mail, a written decision meeting the requirements of NRS 233B.125 within 30 days after the close of the hearing.*

Sec. 44. *1. A party may file a posthearing motion only to request a rehearing or to request a modification of the discipline, fine, costs or attorney's fees imposed against a respondent.*

2. Any posthearing motion must be filed within 15 days after service of the decision by the hearing officer.

3. The opposing party may file an opposition within 10 days after a posthearing motion is filed, and the moving party may file a final reply within 5 days after an opposition is filed.

4. The hearing officer shall issue and serve upon all parties, personally or by certified mail, a written decision on any posthearing motion within 30 days after the posthearing motion is filed.

Sec. 45. *1. A person who provides a governmental entity, officer or employee with any information relating to a contested case is immune from any civil liability for providing that information if the person acted in good faith and without malicious intent.*

2. A governmental entity, officer or employee is immune from any civil liability for:

(a) Any decision or action taken in good faith and without malicious intent in carrying out the provisions of this chapter or chapter 645A of NRS or any law or regulation governing occupational licensing; or

(b) Communicating or cooperating with or providing any documents or other information to any other governmental entity, officer or employee conducting an investigation, disciplinary proceeding or civil or criminal prosecution.

Sec. 46. NAC 645A.030 is hereby amended to read as follows:

645A.030 1. Each escrow agency shall:

(a) Deposit all money held in trust by the escrow agency into a trust account in a financial institution pursuant to NRS 645A.160; ~~and~~

(b) Deposit all money held in trust by the escrow agency into the trust account on or before the close of the next business day after receipt of that money unless otherwise instructed in written instructions between the parties;

(c) Inform the financial institution of the purpose of the trust account ~~and~~; *and*

(d) Verify with the financial institution that the money deposited in the trust account is insured to the maximum amount permitted by federal law for accounts held as trust accounts.

2. Pursuant to NRS 645A.070, each escrow agency shall maintain, for a period of at least 6 years after final disposition of an escrow transaction:

(a) All records of the transaction, including, without limitation, checkbooks, cancelled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings and other statements of disbursements rendered to a client or other party with regard to the trust account; and

(b) Any records that are related to the trust account which clearly reflect the date, amount, source and explanation for any receipt, withdrawal, delivery or disbursement of the funds or other property of a client with regard to the trust account.

3. The records maintained pursuant to subsection 2 must be ~~available~~ :

(a) Prepared in accordance with generally accepted accounting principles; and

(b) Available for inspection by the Division, upon its request.

4. For the purposes of this section, “financial institution” includes any federally insured bank, savings and loan association, credit union, savings bank and any other federally insured institution located in this State that accepts for deposit funds held in trust by escrow agents and agencies.

Sec. 47. NAC 645A.040 is hereby amended to read as follows:

645A.040 1. Except as otherwise provided in this section, an escrow agency shall submit to the Commissioner, not later than 120 days after the last day of each fiscal year of the escrow agency, a financial statement that:

(a) Is dated not earlier than the last day of the fiscal year of the escrow agency; and

(b) Has been prepared based on the books and records of the escrow agency by an independent public accountant who has a valid permit to engage in the practice of public accounting in this State.

2. The Commissioner may grant a reasonable extension of time for the submission of a financial statement required pursuant to this section if an escrow agency requests an extension not later than 120 days after the last day of the fiscal year of the escrow agency.

3. If an escrow agency maintains a trust account pursuant to NRS 645A.160, the financial statement submitted pursuant to this section must:

(a) If the trust account has an average monthly balance of \$250,000 or less, be reviewed by an independent public accountant before it is submitted to the Commissioner. The review must be consistent with the standards set out in sections 400 to 408, inclusive, of the *Statements on*

Standards for Accounting and Review Services published by the American Institute of Certified Public Accountants.

(b) If the trust account has an average monthly balance that exceeds \$250,000, be audited before it is submitted to the Commissioner. The escrow agency shall ensure that the public accountant who prepares the report of an audit submits a copy of the report to the Commissioner and the escrow agency at the same time.

4. The Commissioner may make available an approved format and sample content for the financial statement required by this section. If the Commissioner makes available such an approved format, an escrow agency must submit the financial statement in substantially the same format as that made available by the Commissioner.

Sec. 48. NAC 645A.050 is hereby amended to read as follows:

645A.050 1. Each escrow agent and agency shall conduct the business of the escrow agency openly, fairly and honestly, and shall at all times conform to the accepted business ethics and practices of the escrow agency business.

2. Each escrow agent and agency shall act without partiality to any of the parties to an escrow transaction.

3. If an escrow agency performs services as a third party in the collection of payments in connection with a loan secured by real property ~~[-, unless]~~ :

(a) Unless otherwise agreed between the parties, the escrow agency must remit the payment to the person who is entitled to receive the payment not later than 30 days after the last day of the month in which the escrow agency collected the payment ~~[-]~~ ; *and*

(b) The escrow agency shall not make payments in a manner that causes a policy of insurance to be cancelled or causes property taxes or similar payments to become delinquent.

~~[3.]~~ 4. If an escrow agency maintains a trust account, the trust account must at all times contain sufficient money to pay all money due or owing to all clients. An escrow agency shall not make a disbursement from the account unless authorized to make a disbursement by:

- (a) Escrow instructions;
- (b) A servicing agreement; or
- (c) An agreement between the parties to the transaction that the escrow agency may periodically withdraw money from the account to pay for services performed for the client.

~~[4.]~~ 5. Each escrow agency that maintains a trust account shall keep a record of all money deposited in the account. These records are subject to inspection by the Commissioner or his authorized representative and must include, without limitation:

- (a) The name of the person who sent the money to the escrow agency;
- (b) The account in which the money was deposited;
- (c) The name of the person to whom the money belongs;
- (d) The date the money was received;
- (e) The date the money was deposited into the account;
- (f) The date of each withdrawal from the account; ~~and~~
- (g) *The name of each person to whom money was disbursed; and*
- (h) Any other pertinent information concerning the account, including, without limitation, escrow instructions and servicing agreements.

~~[5.]~~ 6. *If an escrow for the sale of real property is established, the holder of the escrow shall, on the date of establishment of the escrow, record in writing the number and the date of expiration of the license issued pursuant to chapter 624 of NRS of any contractor who will be*

paid from money held in the escrow. The holder of the escrow is not required to verify independently the validity of the number of the license.

7. An escrow agency or agent shall post in the records of the escrow any receipt or disbursement of money as of the date of that receipt or disbursement, regardless of the date of the act of posting.

8. Upon receipt of a request in writing from the Commissioner or from a person who deposited a document, money or property into escrow, an escrow agency shall account to the requestor for that document, money or property held in trust and shall provide a written receipt for any deposit into escrow if requested by the person making the deposit. An escrow agency may provide a receipt of deposit electronically.

9. All written escrow instructions and all escrow instructions transmitted electronically via the Internet must be dated.

10. An escrow agency shall not accept any change to escrow instructions, or to amended or supplemental escrow instructions, unless the change is signed or initialed by all persons who signed or initialed the escrow instructions before the change was presented.

11. An escrow agency shall deliver a copy of the escrow instructions or a change to the escrow instructions to the person executing the instructions or change to the instructions at the time of execution.

12. An escrow agency shall use documents, money or other property deposited in escrow only in accordance with the written escrow instructions of the principals to the escrow or, if not otherwise directed by written or electronically executed instructions, in accordance with sound escrow practice, or pursuant to an order of a court of competent jurisdiction.

13. An escrow agency shall not record or deliver for recording any instrument which purports to transfer a person's title to or interest in real property without first obtaining that person's written consent to the recording or delivery.

14. Upon close of escrow, an escrow agency shall deliver to each principal in the transaction a written statement of all receipts and disbursements, identifying the person to whom any such disbursement was made.

15. An escrow agency shall file with the Commissioner a copy of any document:

(a) Affecting the escrow agency; and

(b) Filed by the escrow agency with the Secretary of State,

↪ which has not been previously filed with the Commissioner.

16. If the Commissioner determines that an escrow agency has not complied with ~~[subsection]~~ *the provisions of subsections 2 [, 3 or 4,] to 15, inclusive,* he may require the escrow agency to deliver an audited financial statement that is prepared, using the records of the escrow agency, by a certified public accountant who holds a certificate to engage in the practice of public accounting in this State. Except as otherwise provided in this subsection, the financial statement must be submitted to the Commissioner not later than 60 days after the Commissioner requests the financial statement from the escrow agency. The Commissioner may grant a reasonable extension for the submission of the financial statement if an extension is requested not later than 60 days after the Commissioner requests the financial statement from the escrow agency.

Sec. 49. 1. This section and sections 1 to 11, inclusive, and 13 to 48, inclusive, of this regulation become effective upon filing with the Secretary of State.

2. Section 12 of this regulation becomes effective on January 1, 2011.